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5 UNITED STATES DISTRICT COURT  
6 CENTRAL DISTRICT OF CALIFORNIA  
7 WESTERN DIVISION  
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9 LESLIE VAN HOUTEN,

10 Petitioner,

11 v.

12 DAWN DAVISON, Warden,

13 Respondent.  
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Case No. CV 09-09355 AG (AN)

ORDER APPROVING AND  
ADOPTING AMENDED REPORT  
AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE

15 Pursuant to 28 U.S.C. § 636, the court has reviewed the file, including the  
16 Magistrate Judge's Amended Report and Recommendation ("Amended R&R") and  
17 Petitioner's Objections thereto, *de novo*.

18 IT IS ORDERED that:

19 1. The Objections are overruled. Petitioner's repeated characterization of the  
20 clear holding of *Swarthout v. Cooke*, 562 U.S. ---, --- S. Ct. ----, No. 10-333, 2011 WL  
21 197627 (U.S. Jan. 24, 2011) (per curiam), as dicta is misplaced. Equally, if not more,  
22 misplaced is her related argument that *Cooke* is entitled to less weight because it is a  
23 per curiam opinion. Indeed, to the extent Petitioner thinks *Cooke's* holding is mere  
24 dicta, and that its holding is not controlling, Petitioner is directed to review the Ninth  
25 Circuit's recent orders in *Smiley v. Hernandez*, no. 06-55727, 2011 WL 343951 (9th  
26 Cir. filed Jan. 28, 2011); *Tash v. Curry*, no. 08-17150, 2011 WL 304377 (9th Cir. filed  
27 Feb. 1, 2011), which recognize *Cooke's* holding as clearly established federal law, not  
28 dicta, and are cited for their persuasive value pursuant to Fed. R. App. P. 32.1(a).

1           2.     The Amended R&R is approved and adopted.

2           3.     Judgment shall be entered denying the Petition and dismissing this action  
3 with prejudice.

4           4.     All motions are denied as moot and terminated.

5           IT IS FURTHER ORDERED that the clerk of the court shall serve a copy of this  
6 Order and the Judgment on all counsel or parties of record.

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9     Dated: February ~~28~~ 2011

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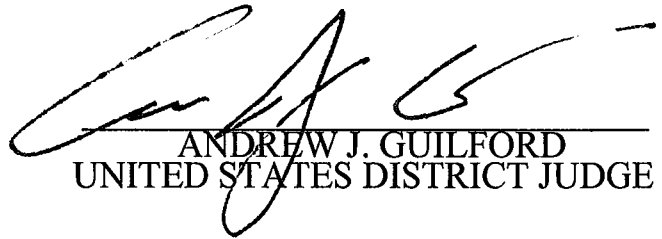
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ANDREW J. GUILFORD  
UNITED STATES DISTRICT JUDGE